

1 APPEARANCES:

2 FEDOTA CHILDERS, PC, by
3 MR. PAUL D. STREICHER and
4 MR. DAVID R. SCHMIDT
5 70 West Madison Street, Suite 3900
6 Chicago, Illinois 60602
7 (312) 236-5015
8 Appearing on behalf of CSX Transportation;

9 MR. CHARLES D. MOCKBEE, III
10 711 North Gilbert Street
11 Danville, Illinois 61832
12 (217) 446-9208
13 Appearing on behalf of Newell Township
14 Road District via telephone and
15 videoconference;

16 MR. PAUL SALADINO
17 527 East Capitol Avenue
18 Springfield, Illinois 62701
19 (217) 785-8423
20 Appearing on behalf of Staff
21 via videoconference.

22 SULLIVAN REPORTING COMPANY, by
Tracy L. Overocker, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
None.					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
None so marked.		

1 JUDGE KIRKLAND-MONTAQUE: By the power vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I now call Docket No. T06-0058
4 for hearing.

5 This is in the matter of CSX
6 Transportation, Inc., Newell Township Road District
7 and the State of Illinois, Department of
8 Transportation and this is regarding a stipulated
9 agreement regarding improving public safety at the
10 Sunset Road highway-rail grade crossing of CSX
11 Transportation's tracks near Danville, Illinois.

12 May I have appearances, please,
13 starting with CSX.

14 MR. STREICHER: Good morning, your Honor. For
15 the record, my name is Paul Streicher. Also with me
16 is David Schmidt. We are from Fedota Childers. Our
17 office address is 70 West Madison Street, Suite 3900,
18 Chicago, 60602. The main telephone number is area
19 code (312) 236-5015.

20 JUDGE KIRKLAND-MONTAQUE: Thank you.

21 Newell Township Road District.

22 MR. MOCKBEE: Good morning, your Honor, again.

1 Chuck Mockbee here. My office is at 711 North
2 Gilbert Street in Danville, 61832. Telephone (217)
3 446-9208.

4 JUDGE KIRKLAND-MONTAQUE: Okay. Staff.

5 MR. SALADINO: John Saladino, S-a-l-a-d-i-n-o,
6 representing the Railroad Safety Section of the
7 Transportation Bureau. The address is 527 East
8 Capitol Avenue, Springfield, Illinois 62701 and phone
9 number is (217) 785-8423.

10 JUDGE KIRKLAND-MONTAQUE: Okay. Let the record
11 reflect that we do not have a representative from
12 IDOT here today. They may join us during the hearing
13 and if so, I will take an appearance at that time.
14 In the meantime, we have set this for another status
15 hearing to give the parties an opportunity to discuss
16 a possible agreement in this matter.

17 So if Mr. Streicher or Mr. Schmidt
18 would like to give us an update on where we are.

19 MR. STREICHER: We continue to make progress
20 towards a settlement. All of the parties, including
21 Newell Township and also County supervisors,
22 Mr. Saladino on behalf of ICC Staff, Jason Johnson

1 and Jeff Harpring with IDOT, Dave Schmidt and myself
2 all met at what was the Sunset Road crossing in
3 Danville, Illinois, to obtain input from ICC Staff
4 and IDOT as to our proposed private crossing.

5 It was a fruitful meeting on the site.
6 Mr. Saladino raised some issues in terms of
7 connecting the two public roads on both sides and the
8 parties, I think jointly, kind of came up with a
9 solution to that that we had not thought of
10 previously and that was to have Farmer Miller, to
11 whose benefit this private crossing would inure, to
12 have him, perhaps, vacate part of the public road on
13 his side of the land and that would obviate ICC Staff
14 issues with it being a public -- a private crossing
15 at two public roads.

16 Outstanding right now is Newell
17 Township's efforts to contact Farmer Miller in that
18 regard and I'll let Mr. Mockbee talk more about that.
19 On behalf of CSXT, once we start to have that process
20 going, I think our next step would be to probably
21 begin to draft a private crossing agreement, have
22 plans done, submit it to ICC Staff and IDOT for their

1 review and comments as well.

2 So we've had made some progress and
3 it's been productive.

4 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you.

5 Mr. Mockbee, would you like to fill --
6 give us your position?

7 MR. MOCKBEE: Yes, your Honor.

8 As been stated, we did have a meeting,
9 it was on July 21st and it was very productive in
10 that we were able to come up with a solution to the
11 problem that would otherwise be there with the
12 connection of two public -- two sides of the public
13 road with this private crossing. As was stated, we
14 believe that that solution would be a vacation of
15 the -- part of the road on the west side leaving the
16 road as it is on the east side. We have not been
17 able to make connection with the Miller family as of
18 this date. We are confident, based upon previous
19 conversations with them, that this -- you know, that
20 in principle that this -- a private crossing is
21 acceptable to them. I think the condition would be
22 that the private crossing agreement is one that

1 answers the questions with regard to liability and
2 all the other issues that anybody would have that
3 would be entering into an agreement as such.

4 So we have made progress. We feel we
5 have a plan that will work with regard to the
6 vacation on the west side and subject to seeing a
7 proposed private crossing agreement, we believe this
8 can be worked out.

9 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you.

10 Mr. Saladino, do you concur with the
11 summaries so far?

12 MR. SALADINO: Yes, your Honor. I think I
13 expressed at the meeting having a public roadway on
14 both sides of a private crossing will be something
15 that Staff would be against. We did come up with a
16 solution. Hopefully, the Township can vacate the
17 roadway on the west side of the crossing making it a
18 private roadway, it would be owned by the farmer that
19 needs the private crossing. And so if that were to
20 occur, then Staff would not have a problem with this
21 private crossing.

22 JUDGE KIRKLAND-MONTAQUE: Okay. If someone

1 could just try to give me a visual picture. I know
2 in the -- at some point, there was discussion about
3 cul-de-sacs on each side. Is that not being
4 contemplated anymore?

5 MR. SALADINO: Currently there is a cul-de-sac
6 on the west side --

7 JUDGE KIRKLAND-MONTAQUE: Okay.

8 MR. SALADINO: -- that was installed by the
9 Township. That would be part of the vacation of that
10 roadway. When the Township vacates the west portion
11 of the roadway, then the farmer would either have to
12 accept responsibility for that cul-de-sac or the
13 cul-de-sac would have to be moved further to the west
14 at the point in which the Township roadway ends. But
15 if there is a need for school buses to turn around, I
16 believe the two residents on the north and south side
17 of Sunset at that location are the farmers, the
18 Millers, and I think the school bus is picking up
19 their children.

20 So that would have to be worked out
21 between the private property owner and the Township,
22 but there will still be a need for that cul-de-sac.

1 But at present, the crossing is closed and there is a
2 cul-de-sac there right now --

3 JUDGE KIRKLAND-MONTAQUE: Okay.

4 MR. SALADINO: -- on the Township right of way.

5 JUDGE KIRKLAND-MONTAQUE: I understand.

6 MR. MOCKBEE: Your Honor, we do not anticipate
7 building any kind of a cul-de-sac on the east side.
8 It's our plan that the public road would connect up
9 with the side of the private crossing. We believe
10 that we can get along without the cul-de-sac, proper
11 signage to keep people away on the crossing and in
12 the event that somebody would wander near, we believe
13 that it's only a short distance where they could back
14 out and access a driveway to turn around. So we
15 don't anticipate building cul-de-sacs on the east
16 side.

17 As was stated, the school bus is
18 currently using the cul-de-sacs on the west side and,
19 of course, the farmer uses those, two, to access his
20 fields. The Millers own on both the north and the
21 south sides of that road which extends west on the
22 crossing. So they would become the owner's upon

1 vacation of those cul-de-sacs, to the extent that
2 they are on their property, of course, the Railroad
3 would be responsible for their right of way.

4 JUDGE KIRKLAND-MONTAQUE: I see. So
5 basically --

6 MR. STREICHER: The cul-de-sacs are already on
7 the Miller property --

8 MR. MOCKBEE: Right.

9 MR. STREICHER: -- so maintaining them would
10 not be a Railroad obligation.

11 MR. MOCKBEE: Nor the Township.

12 MR. SALADINO: Currently the cul-de-sac is on
13 the Township property off the Railroad right of way.

14 MR. STREICHER: Yes.

15 MR. SALADINO: If the Township were to vacate,
16 then the cul-de-sac would then be on private property
17 and owned by the Millers.

18 MR. MOCKBEE: It's partly on Township and
19 partly on private because we did not obtain any kind
20 of an application when those cul-de-sacs were
21 installed. So they're partly on right of way, but
22 they probably extend into the private property of the

1 Millers, but that shouldn't be an issue.

2 MR. SALADINO: Sure. If I could add one more
3 thing. This is John Saladino representing Staff.

4 We were talking about having a locking
5 gate mechanism on both sides of the private crossing
6 that the farmer would have to sign the agreement with
7 the Railroad and he would have a key and that way he
8 would control and have to make sure that when he uses
9 the crossing, after he crossed it, he would have to
10 lock it back up so that this crossing would only be
11 accessible to the farmer or the two farmers and
12 that's paramount. We want to make sure that the
13 public doesn't -- you know, if he leaves the gate
14 open, the public can drive through it.

15 So we're talking about -- the Township
16 is going to have to have Road Closed Ahead signs and
17 some sort of barricades and possibly even using the
18 gates as their permanent barricade and having the
19 Road Closed Ahead signs or Road Closed signs attached
20 to that gate, some mechanism of that sort. We would
21 be acceptable to that.

22 So that's the plan moving forward.

1 MR. SCHMIDT: I would assume that also on the
2 west side of it was private road that -- or the
3 Township or whomever would be able to put up No
4 Trespassing signs leading to the private road.

5 MR. MOCKBEE: Any signage we can put up. We
6 will have to work with the City of Danville because
7 the west part of Sunset is in the city of Danville
8 where it attaches to North Vermilion Street, but we
9 anticipate that they would help us with signage and
10 that shouldn't be an issue.

11 MR. STREICHER: So as you can see, Judge, we
12 are on our way. There are still some of these issues
13 that we are working on, but I think the basic format
14 of a resolved agreement --

15 MR. SCHMIDT: Is in place.

16 MR. STREICHER: -- seems still to be in place
17 and moving forward.

18 JUDGE KIRKLAND-MONTAQUE: Okay. Well, that's
19 good to hear. So, basically, can -- no one knows
20 what the farmer thinks about this new proposal; is
21 that true?

22 MR. MOCKBEE: Not at -- this latest proposal.

1 He has earlier indicated his acceptance of the
2 concept of a private crossing.

3 JUDGE KIRKLAND-MONTAQUE: Okay. Okay. Okay.

4 MR. MOCKBEE: We do believe it will be
5 acceptable.

6 JUDGE KIRKLAND-MONTAQUE: And IDOT, because
7 they're not here, you all could -- could someone fill
8 me in as to their position. They're in support of
9 it, I assume, too?

10 MR. SALADINO: Yes. Based on our meeting on
11 the 21st, IDOT was acceptable to the comments that
12 were made. They want to make sure and Staff wants to
13 make sure that the Road Closed Ahead signs and stuff
14 meet the requirements of the Manual for Uniformed
15 Traffic Control Devices, and so that's those issues
16 that the Township is working on with the Railroad.
17 Once they've resolved those issues, then they can
18 bring forth the set plans that IDOT and Staff can
19 review and then we can comment or we can accept, let
20 them know of our acceptance with those requirements
21 that they have.

22 So right now, we're just kind of

1 waiting. We need the Township to talk to the farmer
2 to make sure it's acceptable and then we need the
3 Township to work with the Railroad to make sure they
4 have an agreement and once they do, then come to us
5 and IDOT and make sure that we don't have any
6 problems with that and then hopefully all the issues
7 will be resolved.

8 JUDGE KIRKLAND-MONTAQUE: Okay. So how much
9 time do we think we need? Why don't we set it for
10 another status? Hopefully you can resolve the
11 matters on your own, but let's just set another
12 status date so we --

13 MR. SCHMIDT: 60.

14 JUDGE KIRKLAND-MONTAQUE: 60? I'm sorry. I
15 didn't hear you.

16 MR. STREICHER: Mr. Schmidt was whispering.

17 JUDGE KIRKLAND-MONTAQUE: That's why I didn't
18 hear. I wasn't supposed to hear.

19 MR. STREICHER: It's okay. He said probably a
20 minimum of 60 and --

21 JUDGE KIRKLAND-MONTAQUE: What about 90? It
22 sounds like there is quite a bit that needs to

1 happen.

2 MR. MOCKBEE: Your Honor, 60 might be better
3 from the Township's standpoint. As I see it, even
4 though we get a draft of a private crossing
5 agreement, these things still need to be implemented
6 and I assume that this case will not be finally
7 considered resolved or settled until, for instance,
8 the crossing has to be installed. I would, you
9 know -- can we leave this case open until the work is
10 actually being done? We have to vacate the road,
11 that shouldn't take too long; but you could run
12 into -- I guess, at least somebody could object to
13 the closure. We believe that we can get the job
14 done, but until you've actually held the vacation
15 hearing and gone through -- you don't know exactly
16 what's going to happen. So I would rather see 60
17 days and -- with the thought that we would come back
18 and report on the progress and see how this thing is
19 going.

20 What do you -- Paul and David, what's
21 your comments on this?

22 MR. SCHMIDT: Let me ask you this question,

1 Chuck: How soon do we anticipate that you'll be able
2 to actually sit down with Farmer Miller and his
3 brother and come to an agreement as to updating him
4 as to acceptance of this version of the private
5 crossing in conjunction with your previous
6 discussions with him? I mean, can you get that done
7 in the next week? 10 days? 2 weeks? I mean...

8 MR. MOCKBEE: Probably 10 days. Two weeks to
9 make the connection and get his thoughts on this.
10 That shouldn't -- we shouldn't be delayed long on
11 that.

12 JUDGE KIRKLAND-MONTAQUE: Well, 60 days is
13 fine. I just wanted to throw out -- you know, I just
14 wanted to give you enough time; but if everyone is in
15 support of 60 days, that is certainly fine by me.

16 Why don't we go off the record and
17 select a date.

18 (Discussion off the record.)

19 JUDGE KIRKLAND-MONTAQUE: We are back on the
20 record. So this matter will be continued to Tuesday,
21 October 5th, 10:30 in Chicago and Springfield via
22 videoconference and I will grant Mr. Mockbee to

1 participate via telephone again.

2 Thank you. We'll reconvene at that
3 time.

4 (Whereupon, the hearing in the
5 above-entitled matter was
6 continued until October 5th, 2010,
7 at 10:30 a.m.)

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